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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,392	12/19/2000	Paul Michael Brennan	3650-005US	2571
26123	7590	07/07/2006	EXAMINER	
BORDEN LADNER GERVAIS LLP WORLD EXCHANGE PLAZA 100 QUEEN STREET SUITE 1100 OTTAWA, ON K1P 1J9 CANADA			STORM, DONALD L	
			ART UNIT	PAPER NUMBER
			2626	

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/739,392

Applicant(s)

BRENNAN ET AL.

Examiner

Donald L. Storm

Art Unit

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Braman

2. Claims 1-2, 4-16 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Braman et al. [International Publication WO 99/14928], already of record.

3. Claims 1-2 and 4-10 are rejected using the same rationale as in the prior Office action (mailed February 9, 2006).

4. Regarding claim 11, Braman [at Fig. 1] describes a communication system by describing the content and functionality of the recited limitations recognizable as a whole to one versed in the art as the following terminology:

a device [at page 4, lines 8-13, as a cellular handset];

it is an input device [at page 4, lines 8-13, as the cellular handset connects by calling];

an audio output device [at page 7, lines 7-9, as the connected call plays voice messages];

an application system [at Fig. 1, as a cellular telephone network];

a profile database [at Fig. 1 and page 3, lines 23-24, as data storage subsystem (of a cellular telephone network) storing recognition data derived from subscribers and user dialing entries derived from subscribers, also known at page 5, line 17, as data subsystem storing directory];

the profile comprises a plurality of profiles of user-defined functions [at page 5, line 1, as caller-programmed directory entries for programming as directory entries];

the functions being a speech based user interface for use with the application system [at Fig. 1, items 14, 15, 20 and page 3, lines 16-26, as speech recognition and trainable dialing entry system VAS of a cellular telephone network];

customization means permitting customization of the functions [at page 5, lines 1-2, as the caller programming a VAS directory entry]; and

a speech user interface subsystem [at Fig. 1, item 20 and page 3, lines 16-26, as speech recognition and trainable dialing entry system VAS].

5. Claims 12-13 are rejected using the same rationale as in the prior Office action (mailed February 9, 2006).

6. Regarding claim 14, Braman also describes:

the functions comprise messaging system functions [at page 6, lines 10-14, as the speaker dependent directory name "MAIL" and the recorded string for access to a voice mail system and play messages].

7. Claims 15-16 and 18-20 are rejected using the same rationale as in the prior Office action (mailed February 9, 2006).

Claim Rejections - 35 USC § 103

Braman and Beyda

8. Claims 3 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braman et al. [International Publication WO 99/14928] in view of Beyda et al. [US Patent 6,487,277], both already of record.

9. Regarding claim 3, Braman describes the included claim elements by dependency as indicated elsewhere in this Office action. When Braman [at page 4, lines 19-20] describes access to the menu items, Braman writes them in an order, but does not discuss the order of the menu items in detail. In particular, Braman does not explicitly describe customizing the menu structure.

Like Braman, Beyda [at column 7, lines 31-43] includes an embodiment in which a user may store functions that the user has executed for easy access the next time. Beyda describes a menu of functions and describes:

customizing a command menu structure in a DTMF driven user interface [at column 4, lines 9-15, as provide the user's menu of command in an updated order according to frequency of use according to the particular user by monitoring the DTMF receiver and the selections].

As indicated, Beyda had described customizing a command menu structure in a DTMF driven user interface at the time of invention. Since Beyda [at abstract] also points out that adjusting the order selected functions are presented has the advantage of tailoring the presentation to the needs of users, it would have been obvious to one of ordinary skill in the art of interactive voice response systems at the time of invention to include the concepts described by Beyda, at least including customizing the way that Braman's command menu structure is presented for Braman's speech/DTMF user interface presentation of menu items, because that would provide the advantage of tailoring the presentation to the needs of the user.

10. Claim 17 is rejected using the same rationale as in the prior Office action (mailed February 9, 2006).

Response to Arguments

11. The prior Office action, mailed February 9, 2006, objects to the claims, and rejects claims under 35 USC § 102 and § 103, citing Braman and others. The Applicant's arguments and changes in AMENDMENT/RESPONSE, filed May 9, 2006, have been fully considered with the following results.

12. With respect to objection to the claims, the changes entered by amendment provide clear descriptions of the claimed subject matter. Accordingly, the objections are removed.

13. With respect to rejection of claims 1-2 and 4-20 under 35 USC § 102 and § 103, citing Braman alone and in combination, the Applicant's arguments appear to be as follows:

a. The Applicant's argument appears to be that Braman's dialing entries stored in the data subsystem directory are not the functions required by the claims. The argument specifically attempts to limit (prior art reference) Braman's "script" or "macro" to a way of storing a phone number and other selected items that are required in response to a voice prompt menu, and limit the "script" or "macro" to being able to initiate execution of a function only. Hence, the argument is that the reference Braman does not anticipate the claimed invention.

That argument is not persuasive. First, that argument would require that a function, a "macro", of a "script" cannot initiate another function or re-initiate itself. Neither the claims of the application, nor its specification, nor Braman is explicitly restricted to the narrower interpretation on which this argument relies.

Second, that argument is not persuasive because Braman discloses the elements and arrangement as set forth by the claim. Although anticipation requires that the elements be arranged and function as set forth by the claim, it is not required that the terminology applied to the elements be identical to claim terminology. Braman's script for dialing entries [for example,

at page 6] provides all of the functionality attributed by the specification to the Applicant's function. Braman also calls it a "string" to be interpreted, thereby becoming a script that accomplishes some function or functions. In this example, some example functions that are accomplished are dialing, authentication, and playing new voice mail messages. As to the Applicant's particular arguments, (a) Braman's script represents a menu item provided to a user as can be seen at page 7, lines 7-13; (b) Braman's script provides information relating to internal elements as can be seen at page 6, line 17, with 555-1212 internal to the script; (c) Braman's script provides information relating to external information as can be seen at page 6, lines 13-14, with the messages at the message service. Braman's dialing entry scripts/strings incorporate the functionality attributed to the claimed "function". Braman is identical in all material respects, and differs only in terminology.

b. The Applicant's argument appears to be that Braman's recitation of the list of directory entries is not the summary required by the claims because it is not information about Braman's voice mail. The Applicant's argument appears to be that Braman's recitation of the cellular telephone network is not the application system required by the claims because the network is not accessed or customized subsequent to dialing. These arguments are not persuasive because what the specification intimates for the terms "summary" and "application system" is not so narrow as the Applicant urges for the terminology of the claims. At page 5, the specification suggests that any information that the user wishes may be included in the summary. The claims contain no express limitations that would preclude the Examiner's interpretation. It is not appropriate for the Examiner to attempt to harmonize the Applicant's interpretation of claim terminology with the application and prior art. Such an approach puts the burden in the wrong place. It is the Applicant's burden to precisely define the invention of the claims, not the PTO's. The 35 U.S.C. Section 112, paragraph 2, puts the burden of precise claim drafting squarely on the applicant. The PTO is obligated to reject the claims when the Applicant fails

precisely to define in the written description the disputed language, and there is a reasonable alternative.

c. The Applicant's further argument regarding claim 14 appears to be that Braman does not describe user-defined messaging system functions. This argument is not persuasive because Braman's script for the dialing entry "MAIL" is for accessing and playing voice mail messages and it is the user-defined function for the same reasons as shown in (a.) above.

The Applicant's arguments have been fully considered but they are not persuasive. Accordingly, the rejections are maintained.

14. With respect to rejection of claim 3 under 35 USC § 102, citing Braman alone, the changes entered by amendment include customizing a command menu structure.

The reference Braman does not explicitly describe that limitation. Accordingly, the rejection is removed. The Applicant's assertions with respect to claim 3 have been considered, but they are moot in view of the new claim element. Please see new grounds of rejection applied to address the new claim element: customizing a command menu structure in a DTMF driven user interface.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any response to this action should be mailed to:

Mail Stop AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

or faxed to:

(571) 273-8300, (please mark "EXPEDITED PROCEDURE"; for formal communications and for informal or draft communications, additionally marked "PROPOSED" or "DRAFT")

Patent Correspondence delivered by hand or delivery services, other than the USPS, should be addressed as follows and brought to U.S. Patent and Trademark Office, Customer Service Window, **Mail Stop AF**, Randolph Building, 401 Dulany Street, Alexandria, VA 22314

***** **IMPORTANT NOTICE** *****

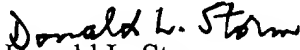
The Examiner handling this application, who was assigned to Art Unit 2654, is assigned to **DIVISION 2626** as a result of consolidation in Technology Center 2600. Please include the new Division in the caption or heading of any communication. Your cooperation in this matter will assist in the timely processing of the submission and is appreciated by the Office.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L. Storm, of Division 2626, whose telephone number is (571) 272-7614. The examiner can normally be reached on weekdays between 7:00 AM and

3:30 PM Eastern Time. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (571) 272-7602.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Inquiries regarding the status of submissions relating to an application or questions on the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 571-272-4100 between the hours of 6 a.m. and midnight Monday through Friday EST, or by e-mail at: ebc@uspto.gov. For general information about the PAIR system, see <http://pair-direct.uspto.gov>. If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 29, 2006


Donald L. Storm
Examiner, Division 2626